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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,952	12/14/2001	William Robert Newman	17,640	7377

23556 7590 03/23/2004

KIMBERLY-CLARK WORLDWIDE, INC.  
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EXAMINER

GOODMAN, CHARLES

ART UNIT PAPER NUMBER

3724

*15*

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/016,952

Applicant(s)

NEWMAN ET AL.

Examiner

Charles Goodman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 8-14, 22-31 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 15-21 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/22/03 12/29/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1. The Amendment filed on December 29, 2003 has been entered.

### *Election/Restrictions*

2. Claims 11-14 and 22-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10. Moreover, claim 10 has also been withdrawn since the elected species does not include this feature, i.e. there is no separate "seal" in the elected Species.

Thus, claims 1-7, 15-21, and 32 remain for consideration on the merits. With regards to claims 8, 9 and 33, they have been withdrawn from consideration for the following reason.

3. Inventions of claims 8, 9, and 33 and the rest of the previously elected invention are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case, the product simply being a plurality of separably joined wipes as claimed can be made by another materially different apparatus that does not require a cartridge, cover, nor the elongated dispensing passage.

***Drawings***

4. Applicant's arguments with respect to the drawings in the last Office Action is noted. The objection has been withdrawn.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 15-21, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Roos.

Roos discloses a dispenser comprising all the elements claimed including, inter alia, a cartridge (e.g. 1); a cover (2); and an elongated passage (e.g. 9). Fig. 1.

7. Regarding claims 8-9 referring to the work, they have not been given significant patentable weight, since it has been held that expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim, *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969), the inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims, *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935), and the material or article worked on by an apparatus does not distinguish the apparatus from prior art which works on a different material or article if the apparatus otherwise is met by the reference, *In re Casey*, 152 USPQ 235 (CCPA 1967).

***Response to Arguments***

8. Applicant's arguments filed 12/29/03 have been fully considered but they are not persuasive.

In response to Applicant's reasons that Roos does not anticipate the claimed invention, this argument is traversed.

With respect to the self fastening aspect of claim 1, the mere fact that the Roos dispenser is hinged is not sufficient reason to ascertain that it is not self fastenable. The fact that the Roos dispenser is capable of remaining in a closed condition anticipates this alleged lacking feature, since this is within the scope of the limitation based upon a reasonably broad interpretation of the same. Moreover, since the cover of Roos is attached (via the hinge), it is also inherently removable.

Regarding the "interference" aspect of the claims, it appears that Roos includes this feature at least from the standpoint that Figs. 1-2 appear to show interference - note the lipped portion at 10 in the Figures.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within


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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-1148.

cg   
March 22, 2004

  
**Charles Goodman**  
**Primary Examiner**  
**AU 3724**

**CHARLES GOODMAN**  
**PRIMARY EXAMINER**